

**Committee Report
Planning Committee on 8 June, 2010**

Item No. 19
Case No. 10/0455

RECEIVED: 17 March, 2010

WARD: Willesden Green

PLANNING AREA: Willesden Consultative Forum

LOCATION: 68 Walm Lane, London, NW2 4RA

PROPOSAL: Change of use from sandwich bar (Use Class A1) to cafe (Use Class A3) and installation of extract duct

APPLICANT: Artisen Energy Ltd

CONTACT:

PLAN NO'S:
See Condition 2

RECOMMENDATION

Approval

EXISTING

The subject site, located on the south-eastern side of Walm Lane, is occupied by a three-storey terraced building consisting of a vacant sandwich bar (Use Class A1) at ground floor level with residential accommodation above. The vacant sandwich bar is the subject of the current application.

The site is located within a designated Primary Shopping Frontage and the Willesden Green Conservation Area.

PROPOSAL

Change of use from sandwich bar (Use Class A1) to cafe (Use Class A3) and installation of extract duct

HISTORY

An application for planning permission (05/2089) for the change of use of the premises from a retail shop (Use Class A1) to a coffee shop (Use Class A3), including the installation of a new shopfront, the use of the area to the front of premises for customer seating and the proposed installation of ventilation ducting was refused in April 2006. The application was refused for the following reasons:-

1. The change of use from A1 (retail) to A3 (Food and Drink) use has a detrimental effect on the retail function of the primary shopping parade by resulting in an overconcentration of such uses which do not provide an essential local service in the shopping area, thereby reducing local service and shopping outlets for residents in the adjoining area. This is contrary to policy SH7 contained within the Brent Unitary Development Plan 2004.

2. The shopfront by reason of its inappropriate design, incongruous materials and appearance in general would significantly detract from the visual appearance of the Willesden Green Conservation Area thus failing to preserve and enhance its special character contrary to policies BE2, BE9, BE25, BE26 and SH21 of the Brent Unitary Development Plan 2004 and advice contained within the Council's Supplementary Planning Guidance No.7 "Shopfronts and Shopsigns"

3. The extract ducts by reason of their siting and appearance on the building would significantly detract from the visual appearance of the Willesden Green Conservation Area thus failing to preserve or enhance its special character contrary to policies BE17 and BE25 of the Brent Unitary Development Plan 2004.

4. The extract ducts by reason of their siting and appearance would result in a reduction to residential amenity and would be visually intrusive to the residential units above the subject site. As such, the development would be contrary to policies BE2, BE9 and BE17 of Brent's Unitary Development Plan 2004.

The Council's Planning Enforcement Team subsequently investigated the premises for any alleged breach of planning control and it was observed during site visits, undertaken by the Council's Enforcement Officer, that the premises was being used as a sandwich bar (Use Class A1), without any form of primary cooking, and that no extract equipment had been installed. As such, it was considered that no change of use to the premises had occurred. The existing shopfront had been replaced without benefiting from planning permission but, following consideration of a recent appeal decision at 19 Walm Lane for a similar breach, it was considered that it would not be expedient to take enforcement action against the shopfront alone.

During a recent site visit, in connection with the current application, it was observed that the proprietors of the sandwich bar have recently vacated the premises and that the unit is currently empty.

POLICY CONSIDERATIONS

London Borough of Brent Unitary Development Plan 2004

The following policies contained in the Council's Unitary Development Plan are considered of most relevance to the determination of the current application.

BE2	Townscape: Local Context & Character
BE17	Building Services Equipment
BE25	Development in Conservation Areas
BE26	Alterations & Extensions to Buildings in Conservation Areas
SH6	Non-Retail Uses Appropriate to Primary Shopping Frontages
SH7	Change of Use From Retail to Non-Retail
SH10	Food and Drink (A3) Uses
SH11	Conditions for A3 Uses
TRN22	Parking Standards - Non Residential Developments

SUSTAINABILITY ASSESSMENT

Not applicable

CONSULTATION EXTERNAL

Consultation letters, dated 25th March 2010, have been sent to (pre-election) Ward Councillors and 18 neighbouring owner/occupiers. A site notice, dated 31st March 2010 was posted outside of the premises. The initial site notice was replaced following a complaint that it had been removed. In response 8 individual letters of objection and petitions of objection, with a total of 113 signatures, have been received in response. The concerns of the objectors include:-

- The proposed development will cause problems of noise, vibration odour and waste for local residents
- The proposed use will not be of benefit to residents in the local community
- The proposal involve the use of a residential garden which the applicant does not own
- The proposed use will increase competition for local businesses which are already struggling
- The applicant does not have permission of the free-holder to attach the proposed extract duct to the building.

INTERNAL

PLANNING POLICY & RESEARCH

Following a recent survey of the Willesden Green Primary Shopping Frontage the Council's Planning Policy Officers have considered the principle of the change of use against the policies contained in the adopted Unitary Development Plan (2004). The view of the Council's Planning Policy Officers is that the proposed change of use would be in accordance with the Unitary Development Plan policies. The Council's Planning Policy Officers consider that the proposal would add to the vitality, viability and diversity of Willesden Green Town Centre.

ENVIRONMENTAL HEALTH

The Council's Environmental Health Officer has stated that the siting of the proposed ducting should be sufficient to ensure that problems of noise disturbance and odours do not occur. However, to ensure that this would be the case the Environmental Health Officer has suggested a condition requiring the submission of further technical details of the proposed extract system for approval prior to installation.

TRANSPORTATION UNIT

The existing and proposed uses generate the same maximum car-parking standard for the site and therefore there will be no change in the existing demand for car-parking within the locality. The Council servicing standards for the proposed use are less rigorous than those for the existing use and there will be little noticeable difference in existing highway conditions as a result of the change. Refuse collection arrangements would remain unchanged from the existing situation. The site constraints make the inclusion of secure cycle storage problematic. However, it is noted that there are public cycle stands within 25m of the subject site.

The Council's Transportation Unit do not raise any objection to the proposed development.

REMARKS

POLICY CONTEXT

The borough's main network of town centres, consisting of Major Town, Main District and Other District Centres, is generally formed through the designation of Primary and Secondary Shopping Frontages. Within these designated frontages the Council's planning policies, set out in the adopted Unitary Development Plan 2004 (UDP), seek to promote a diverse and appropriate mix of both retail and non-retail uses which can add vitality to the town centre. However, whilst it is acknowledged that certain non-retail uses can complement and benefit the retail function of a town centre, it is important to ensure that these non-retail uses do not become overly dominant within

the centre as this can lead to problems in terms of reducing the retail choice available to shoppers and in terms of creating "dead frontage", where there is a general absence of window displays, which can lessen the attractiveness of the centre to shoppers. In response to these concerns the Council's planning policies seek to prevent an over-concentration of non-retail uses at the heart of the town centre, within the Primary Shopping Frontage, whilst encouraging complementary non-retail uses towards the Secondary Shopping Frontage on the periphery of the centre. As such, proposals for appropriate non-retail uses within the Primary Shopping Frontage will be assessed against a number of factors, including the composition of uses present within the frontage at the time of the application.

PRINCIPLE OF CHANGE OF USE

The proposal would involve the change of use of the existing sandwich bar (Use Class A1), which is now vacant, into a cafe (Use Class A3). The subject site is located within the designated Primary Shopping Frontage of Willesden Green Main District Centre. The designated Primary Shopping Frontage generally runs from Willesden Green Station, on Walm Lane, to just beyond Willesden Library, on High Road Willesden.

Policies SH6 and SH7 of Brent's Unitary Development Plan 2004 (UDP) set out the criteria where, in principle, a change of use from retail to non-retail would normally be accepted within a Primary Shopping Frontage. Policy SH6 sets out the types of non-retail uses that may be appropriate within a Primary Shopping Frontage, and this includes cafes and restaurants. Policy SH7 sets out the specific conditions and requirements that should be considered when determining applications for such a change of use.

The policy considers the location of the proposal in relation to other existing non-retail units with an aim of avoiding an excessive concentration of units or continuous non-retail frontage with any parade or street block. The units adjoining the subject site are occupied by a chemist (Use Class A1) and a restaurant (Use Class A3). The wider parade running between the junctions with Rutland Park and Chatsworth Road also contains a reasonable variety of both retail and non-retail uses. On balance, it is considered that the proposed use would not result in a localised over-concentration of non-retail uses.

The policy also considers the wider context, in terms of the overall proportion of non-retail units within the entire Primary Shopping Frontage. The policy seeks to limit the proportion of non-retails uses to no more than 35% of the frontage. However, in order to maintain the vitality of the Town Centre during periods of low consumer expenditure the policy sets out that this restriction on non-retail frontage will be relaxed to allow non-retail units to occupy up to 50% of the frontage at times when more than 10% of the frontage is vacant. A previous application on the site in 2006 (see 'History') to change the use of the property to a cafe was refused, in part, on the grounds that at that time already more than 35% of the Primary Shopping Frontage was occupied by non-retail uses. However, surveys carried out this year indicate that the proportion of vacant frontage has increased to 11.2% and therefore the increased threshold of 50% is currently applicable. The proportion of the designated Primary Shopping Frontage occupied by non-retail uses is currently 40.5%. It is therefore considered that the proposed change of use, given the current levels of vacancy within the Town Centre, would comply with the criteria set out in this policy statement.

Overall, it is considered that, in principle, the proposed change of use would comply with the policies SH6 and SH7 contained in the UDP. However, before the proposed change of use can be considered acceptable, in all respects, the other, more direct, impacts of the proposed development must first be considered.

IMPACTS OF THE PROPOSED USE

Given that the principle of the proposed change of use has been established (see above), policy SH10 of the UDP sets out the specific issues associated with food and drink (Use Class A3) uses

which must be considered if the proposal is to be considered acceptable in all respects. These issues generally include the impact of the proposal on residential amenity and local highway conditions. Policy SH11 suggests that conditions may be imposed on any new A3 use to ensure satisfactory standard of development. There are a number of residential units located on the upper floors of the building above the subject site. There are also residential properties towards the rear of the site, along Rutland Park but these are considered to be less directly affected by the proposals.

EXTRACT DUCT

The proposal will involve the erection of an extract duct to the rear of the property. The proposed extract duct would have a diameter of 200mm, would be located approximately 1.75m from the nearest habitable room window and would terminate approximately 1.5m above the eaves. The Council's Environmental Health Unit have inspected the proposals and consider the location of the extract duct to be generally conducive to protecting residential amenity in terms of noise and odours. However, for the avoidance of doubt, it is recommended that a condition requiring further technical details of the extract system should be attached to any permission to ensure that the proposed duct would not cause unreasonable noise, vibration or odours.

In terms of character and appearance, the siting of the proposed extract duct would make it unlikely to be visible from any of the residential windows within the subject building. However, the ducting is likely to be visible from areas to the rear of the subject site, including properties along Rutland Park. Given that the subject site is located within the Willesden Green Conservation Area, the applicant has agreed in principle to paint the extract duct with black or a similarly dull colour to reduce the visual impact of the proposed duct on the character and appearance of the surrounding area. In light of recent appeal decisions within Willesden Green Conservation Area, where larger and more prominent extract flues have been allowed, Officers consider that the proposed extract duct would have a reasonable impact on the character and appearance of the property and surrounding area.

GENERAL ACTIVITY

The subject site is located within a busy Town Centre and therefore some level of disturbance arising from the general activities of commercial operations is to be expected. However, it is important to ensure that any disturbance is kept to a reasonable minimum. It is therefore recommended a condition restricting the hours of use from 0800-2300 on Monday to Saturday and 0800-2230 on Sundays and Bank Holidays. These hours are in accordance with those considered appropriate by a Planning Inspector when determining a recent appeal within the locality of the subject site.

There is an open area to the rear of the subject site. The applicant has confirmed that the area is in fact a shared garden for the flats above 66 and 68 Walm Lane although the occupiers of the subject premises do have a right of way over this land. For the avoidance of any doubt, Officers consider that a condition should be placed on any permission restricting the use of the rear garden for any purpose in connection with the proposed cafe use.

TRANSPORTATION & SERVICING

The premises is located within an area of good public transport accessibility (PTAL4) with Willesden Green tube station and a number of bus routes in close proximity of the site. The surrounding area is located within controlled parking zone MW which operates from 0800-1830 Monday to Saturday. In any case, the proposed change of use is unlikely to significantly change the existing demand for parking and servicing within the locality of the site as confirmed by the Council's Transportation Unit (see 'Consultation').

The applicant has not provided specific details for the storage and collection of refuse as part of the application details. However, it is envisaged that refuse requirements of the proposed use would not differ significantly from the previous use as a sandwich bar. For the avoidance of doubt, a condition should be imposed on any permission requiring the applicant to submit and adhere to an approved refuse management plan. It should be noted that the previous use operated without the control of such an agreement.

CONSIDERATION OF OBJECTIONS

Concerns relating to the impact of the proposed extract duct, the use of the residential garden and the principle of the proposed change of use have been addressed in the above report

Concerns have been raised regarding the increased competition that the proposed use would generate for similar existing uses within the vicinity of the site. Whilst acknowledging the concerns of the objector, as Members will be aware, competition between individual small scale businesses is not normally a material planning consideration that can be used to determine planning application. Furthermore, whilst some objectors have questioned the benefit of the proposed use to the wider community, Officers consider that any appropriate proposal, as defined by UDP policy, which would encourage the reoccupation of this vacant unit would be of benefit to the general vitality of Willesden Green Town Centre.

An objector has stated that they would have the legal right to prevent the installation of the proposed extract duct regardless of the Council's planning decision. This may very well be the case but as this would constitute a matter of civil law Officers do not consider that this should affect the determination of the current application as it would be for the applicant to resolve any such matters through the appropriate channels. For clarity, without the extract duct there would be a significant restriction on the range of food and drink activities likely to be provided on the site.

REASONS FOR CONDITIONS

RECOMMENDATION: Grant Consent

REASON FOR GRANTING

- (1) The proposed development is in general accordance with policies contained in the:-

Brent Unitary Development Plan 2004

Relevant policies in the Adopted Unitary Development Plan are those in the following chapters:-

Built Environment: in terms of the protection and enhancement of the environment
Town Centres and Shopping: in terms of the range and accessibility of services and their attractiveness
Transport: in terms of sustainability, safety and servicing needs

CONDITIONS/REASONS:

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning on the date of this permission.

Reason: To conform with the requirements of Section 91 of the Town and Country Planning Act 1990.

- (2) The development hereby permitted shall be carried out in accordance with the

following approved drawings:

- PRQD_0525
- PRQD_0525 A
- A-#.##

Reason: For the avoidance of doubt and in the interests of proper planning.

- (3) The premises shall only be open and used for the preparation or sale of hot food and accept deliveries to the premises between the hours of:

0800 to 2300 Monday to Saturday (Excluding Bank Holidays)
0800 to 2230 Sundays & Bank Holidays

Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties.

- (4) The rear garden of the premises shall not be used for as an area for storage or as a customer seating area in connection with the use, hereby approved, unless prior written approval is first obtained from the Local Planning Authority.

Reason: In the interests of residential amenity

- (5) Details of adequate arrangements for the storage and disposal of refuse, food waste, paper and cardboard waste and recyclable material (including litter bins inside and outside the premises) shall be submitted to and approved in writing by the Local Planning Authority and implemented prior to commencement of the use hereby approved.

Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties

- (6) Further details, including the manufacturers' specification and external appearance, of the proposed extract duct, indicated on the approved plans, shall be submitted to and approved in writing prior by the Local Planning Authority. The approved details shall be implemented in full prior to the commencement of any cooking of hot food on the site.

Reason: To ensure that the proposed extract equipment would not harm the amenity of residential occupiers.

INFORMATIVES:

- (1) The applicant is informed that any alterations to the existing shopfront or signage may require a separate grant of planning permission and/or advertisement consent.

REFERENCE DOCUMENTS:

London Borough of Brent Unitary Development Plan 2004
8 letters and 3 petitions of objection

Any person wishing to inspect the above papers should contact Ben Martin, The Planning Service, Brent House, 349 High Road, Wembley, Middlesex, HA9 6BZ, Tel. No. 020 8937 5231



Planning Committee Map

Site address: 68 Walm Lane, London, NW2 4RA

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